

31A-37a-502 Delinquency.

- (1) Except as otherwise provided in this section, Chapter 27a, Insurer Receivership Act, applies to a special purpose financial captive insurance company.
- (2) Upon an order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to this chapter.
- (3) An amount recoverable by the receiver of a special purpose financial captive insurance company under a reinsurance contract may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding insurer, notwithstanding a contract or other documentation governing the special purpose financial captive insurance company insurance securitization.
- (4) The following applies notwithstanding Chapter 27a, Insurer Receivership Act, or another law of this state:
 - (a) An application, petition, a temporary restraining order, or injunction issued pursuant to Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer does not prohibit the transaction of business by a special purpose financial captive insurance company, including:
 - (i) a payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security; or
 - (ii) an action or proceeding against a special purpose financial captive insurance company or its assets.
 - (b)
 - (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding with respect to a special purpose financial captive insurance company and an order issued by the court in the summary proceeding may not prohibit:
 - (A) a payment by a special purpose financial captive insurance company; or
 - (B) the special purpose financial captive insurance company from taking an action required to make a payment described in this Subsection (4)(b)(i).
 - (ii) Subsection (4)(b)(i) applies only if the payment is made:
 - (A) pursuant to a special purpose financial captive insurance company security or reinsurance contract; and
 - (B) consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.
 - (c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose financial captive insurance company of money or other property made pursuant to a reinsurance contract.
 - (d) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:
 - (i)
 - (A) made to a ceding insurer pursuant to a reinsurance contract; or
 - (B) made to or for the benefit of a holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and
 - (ii) made consistent with the special purpose financial captive insurance company's plan of operation and an order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.
- (5)

- (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws of this state, the assets of a special purpose financial captive insurance company may not be consolidated with or included in the estate of a ceding insurer in a delinquency proceeding against the ceding insurer pursuant to this chapter for any purpose including a distribution to a creditor of the ceding insurer.
- (b) This Subsection (5) applies to assets that include an asset held in trust:
 - (i) on a funds-withheld basis; or
 - (ii) under another arrangement to secure the special purpose financial captive insurance company's obligations under a reinsurance contract.

Enacted by Chapter 302, 2008 General Session